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 9 JOHN G. VARTANIAN, III and MARY MURPHY

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD M. GOVAERTS,) No. C 08-00125 RMW
 Plaintiff,)
 v.) **CASE MANAGEMENT STATEMENT
 SANTA CLARA COUNTY) BY DEFENDANTS VARTANIAN AND
 DEPARTMENT OF CHILD SUPPORT) MURPHY**
 SERVICES; MARY MURPHY, ATTY;) DATE: June 13, 2008
 JOHN G. VARTANIAN, III, COUNTY) TIME: 10:30 a.m.
 OF SANTA CLARA; MELODY) DEPT: 6
 GRANDELL; AND DOES 1-10,) JUDGE: Hon. Ronald M. Whyte
 Defendants.)

Defendants John Vartanian III (“Vartanian”) and Mary Murphy (“Murphy”) (collectively “Defendants”) submit this Case Management Conference Statement and request that the court adopt it as its Case Management Order.

At the first case management conference, Plaintiff Clifford M. Govaerts (“Plaintiff” or “Govaerts”) advised that he planned to begin a search for counsel. No substitution of counsel has been received, and Govaerts has not contacted defense counsel to advise that he has retained counsel. On May 28, 2008, defense counsel left a voicemail for Govaerts (State Bar # 73624) reminding him of the May 30, 2008 deadline to meet and confer and submit this case management statement.

1 **1. JURISDICTION AND SERVICE**

2 Plaintiff's First Amended Complaint ("FAC") asserts a claim for relief under 42 U.S.C.
 3 § 1983 as well as several state tort claims. Accordingly, this court has jurisdiction over the
 4 federal claim and the supplemental state tort claims.

5 Defendant Melody Grandell (Plaintiff's ex-wife) is not a County-affiliated party and is
 6 not represented by counsel for the County. At the first Case Management Conference, Plaintiff
 7 indicated that he was considering voluntarily dismissing Ms. Grandell from the action. To date,
 8 defense counsel has received no notice that Plaintiff has dismissed Ms. Grandell from the
 9 action.

10 No County-affiliated Defendants were properly served. Defendants Vartanian and
 11 Murphy voluntarily accepted service. Defendant County has never been properly served.
 12 The Department of Child Support Services ("DCSS") is a department of the County and is not a
 13 separate entity capable of being sued – it has therefore been improperly named as a defendant.

14 Plaintiff has been repeatedly advised that the County may properly be served by
 15 submitting the summons and complaint to the clerk of the Board of Supervisors and that, once
 16 so served, the County will respond as the County of Santa Clara, also erroneously sued as the
 17 Department of Child Support Services. At the first Case Management Conference, Plaintiff
 18 indicated that it was his intent to attempt to default the County and the Department of Child
 19 Support Services. Plaintiff has not yet done so.

20 **2. FACTS**

21 **A. PLAINTIFF'S EX-WIFE COMMENCED ENFORCEMENT
 22 PROCEEDINGS FOR ARREARAGES IN CHILD SUPPORT AND
 23 SPOUSAL SUPPORT.**

24 Govaerts's ex-wife commenced enforcement proceedings to enforce child and spousal
 25 support orders.

26 **B. PLAINTIFF SOUGHT TO STAY ENFORCEMENT OF ARREARS.**

27 In April 2006, Govaerts' attorney contacted Defendant Murphy requesting that the
 28 Department of Child Support Services cease enforcement of arrears. Defendant Murphy
 29 explained that enforcement could not be stopped without the consent of the custodial parent

1 (here, Govaerts' ex-wife, Defendant Grandell). Govaerts' ex-wife was unwilling to stay
 2 enforcement. She explained that Govaerts – her ex-husband – had recently sold a house and had
 3 the resources to pay the arrears.

4 In April 2006, Govaerts filed an *ex parte* application seeking to stay enforcement of
 5 arrears. Govaerts' supporting papers set forth several scenarios for amounts that he might be
 6 found to owe his ex-wife in child support/spousal support arrears, with the highest of those
 7 amounts being approximately \$23,000. The court issued temporary orders for DCSS to cease
 8 all enforcement on the arrears but continue collecting up to 25% of Govaerts' social security
 9 disability benefit and set the matter for a June 6, 2006 hearing.

10 **C. IN APRIL 2006, ALL ENFORCEMENT OF ARREARS WAS
 11 STOPPED.**

12 Accordingly, in April 2006, Defendant Murphy instructed that all enforcement of arrears
 13 be deactivated, thus there was to be no credit reporting, no reporting to SLIMS (license
 14 revocation) and no tax intercept.¹

15 **D. IN MAY 2006, DEFENDANT MURPHY LEARNED FROM
 16 GOVAERTS' EX-WIFE THAT SHE WAS SEEKING TO
 17 ENFORCE ONLY \$6,894 IN ARREARS.**

18 In late May 2006, Defendant Murphy learned from Govaerts' ex-wife that the total
 19 amount of arrears in child support/spousal that Govaerts' ex-wife was seeking to enforce was
 only approximately \$6,894.

20 **E. ON JUNE 1, 2006, DEFENDANT MURPHY ADVISED THE
 21 COURT THAT THE AMOUNT OF ARREARS WAS ONLY
 22 \$6,894 AND THE COURT CONTINUED GOVAERTS'
 23 APPLICATION TO STAY ENFORCEMENT TO A SETTLEMENT
 24 CONFERENCE IN JULY 2006.**

25 On or about June 1, 2006, in response to Govaerts' application for an order staying
 enforcement of arrears, Defendant Murphy filed a declaration with the court advising that the

26 ¹ The Franchise Tax Board conducts two different types of enforcement. Due to a
 27 data-input error, although the intent was to stop all FTB enforcement, inadvertently only
 the first of two required screens was input. In August 2006 the FTB garnished \$101.53.
 28 Thereafter, that error was corrected to ensure FTB would cease all aspects of its tax
 enforcement as had been originally intended.

1 amount of arrears was only \$6,894. On June 6, 2006, the court conducted a hearing on
 2 Govaerts' application to stay enforcement of the child support/spousal support arrears.
 3 Defendant Murphy, Govaerts and Govaerts' attorney were all present at that hearing. Govaerts'
 4 ex-wife attended telephonically. The matter was continued to July 2005 for a settlement
 5 conference. Pursuant to stipulation of the parties, it was ordered that pending the July 2005
 6 settlement conference \$566/month would continue to be withdrawn from Govaerts' social
 7 security disability; neither Govaerts nor his wife would access retirement funds prior to the next
 8 hearing; and, until the July 2005 settlement conference there would be no further enforcement
 9 of arrears.

10 **F. IN LATE JUNE 2006, GOAERTS ATTEMPTED TO COMMIT
 11 SUICIDE FOR AT LEAST THE SECOND TIME IN UNDER A
 YEAR.**

12 In June 2006, Govaerts' ex-wife reported that in late June 2006, Govaerts had tried to
 13 commit suicide. According to the stay application that Govaerts himself filed with the court in
 14 April 2006, Govaerts had also previously tried to commit suicide in December 2005.²

15 **G. AT THE JULY 2006 SETTLEMENT CONFERENCE, A
 16 STIPULATED AGREEMENT WAS REACHED REGARDING
 17 ONGOING PAYMENTS, ALL MOTIONS WERE TAKEN OFF
 CALENDAR AND THE COURT RETAINED JURISDICTION TO
 DECIDE THE QUESTION OF ARREARS AT A LATER DATE.**

18 On or about July 20 or 21, 2006, the Court conducted a settlement conference.
 19 Defendant Murphy and Govaerts' attorney were present in court for a settlement conference.
 20 Govaerts' attorney could not reach Govaerts. By stipulated order based upon Govaerts' mental
 21 condition, the court modified child support to \$566 as of June 1, 2006, took all pending motions
 22 off calendar without prejudice, and reserved jurisdiction to determine the child support and
 23 spousal support arrears at a later date.

24 ///

25 ///

27 ² Further, according to the general denial and affirmative defenses served by Ms.
 28 Grandell on the day of the first case management conference in this present action,
 Plaintiff has been in and out of mental institutions since January 2000.

1 **H. GOVAERTS PROVIDED SUPPORTING DOCUMENTATION**
 2 **THAT HE HAD OVERPAID HIS 2006 PAYMENTS. AFTER**
 3 **CONFIRMING THAT OVERPAYMENT WITH HIS EX-WIFE**
 4 **AND CONFERRING REGARDING WHETHER OR NOT SHE**
 5 **STILL WISHED TO COLLECT THE OUTSTANDING ARREARS,**
 6 **COLLECTION OF THE ONGOING \$566/MONTH WAS CEASED**
 7 **UNTIL THE \$2,062 OVERPAYMENT WAS CURED.**

8 In December 2006, Govaerts sent a letter stating he believed he had overpaid his
 9 ongoing child support payments (in part because of a direct check he had sent to his wife of
 10 which DCSS had not been advised) and provided supporting documentation. Following a
 11 review, it was determined that for the time period of January 2006 through January 2007,
 12 Govaerts had overpaid his child support payments by approximately \$2,062.

13 Since the amount of the arrears incurred prior to June 1, 2006 and still owing (\$6,894)
 14 exceeded the amount of Govaerts' overpayment, and since the court had reserved jurisdiction
 15 over the arrears, Defendant Murphy conferred with Govaerts' ex-wife regarding whether
 16 Govaerts' ex-wife still wished to enforce the outstanding arrears. After considering the matter,
 17 Govaerts' ex-wife ultimately decided that she did not want to try to collect the arrears.

18 Accordingly, on or about February 12, 2007, Defendant Murphy wrote a letter to
 19 Govaerts summarizing the accounting and overpayment of the ongoing payments and explained
 20 that it would be credited against ongoing child support and ongoing child support would not be
 21 collected until the approximately \$2,062 overpayment was cured.

22 **I. IN FEBRUARY 2007, GOVAERTS WROTE TO DEFENDANT**
 23 **MURPHY COMPLAINING THAT THE BILLING STATEMENTS**
 24 **SENT OUT IN JUNE AND AUGUST 2006 HAD BEEN**
 25 **ERRONEOUS.**

26 Shortly thereafter, in February 2007, Govaerts wrote a letter to Ms. Murphy stating that
 27 the billing statements previously sent out in June and August had indicated approximately
 28 \$43,000 to \$46,000 in arrearage and contending that the purpose of those billing statements
 29 must have been to extort and pressure him. Because Defendant Murphy had instructed in April
 30 2006 that all enforcement cease on the arrears, she had been unaware until after receiving
 31 Govaerts' letter that billing statements had continued to be sent out. She only subsequently
 32 discovered that instructing that all enforcement measures be ceased on arrears does not also

1 automatically suppress generation of further billing statements. Nor, until receiving Govaerts'
 2 letter had Defendant Murphy been previously aware that the information shown on the billing
 3 statements (which she had not known were continuing to be sent) showed an incorrect amount
 4 of arrears rather than the \$6,984 in arrears that had been set forth in her June 2006 declaration
 5 filed with the court, which amount was the only amount at issue. In March 2007, Defendant
 6 Vartanian spoke with Plaintiff Govaerts. erts confirmed the accounts had been corrected. On
 7 October 2007, Plaintiff filed suit.

8 **3. LEGAL ISSUES** - Defendants dispute the legal allegations set forth by erts. Other
 9 legal issues include erts' failure to properly comply with the Tort Claims Act with respect to his
 10 supplemental state tort claims, failure to state a claim and the applicability of various
 11 immunities.

12 **4. MOTIONS** - Defendants anticipate filing a summary judgment motion.

13 **5. AMENDMENT OF PLEADINGS** - None anticipated by Defendants.

14 **6. EVIDENCE PRESERVATION** - Copies of documents have been preserved.

15 **7. DISCLOSURES** - The parties have not yet made their initial disclosures. At the first
 16 CMC the court stayed initial disclosures.

17 **8. DISCOVERY** - The court has stayed initial disclosures. Defendants request that a
 18 future case management conference be set to determine the time-line and scope of discovery, if
 19 required.

20 **9. CLASS ACTIONS** - N/A

21 **10. RELATED CASES** - None known. This case was removed from superior court.

22 **11. RELIEF** - Defendants anticipate filing a dispositive summary judgment motion.

23 **12. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)**

24 Pursuant to ADR Local Rule 3-3(c) and Civil Local Rule 7, Defendants have filed a
 25 motion requesting to be relieved from the automatic assignment to multi-option ADR on the
 26 basis that they believe this case will be properly disposed of by summary judgment motion and
 27 ADR will, therefore, not be efficient or useful at this juncture.

28 **13. MAGISTRATE JUDGE** - Defendants do not consent to the assignment of this matter

1 to a magistrate judge for trial.

2 **14. OTHER REFERENCES** - Defendants submit that this case is presently not suitable
 3 for reference to binding arbitration, a special master, judicial panel or multi-district litigation.

4 **15. NARROWING OF ISSUES** - None

5 **16. EXPEDITED SCHEDULE** - None

6 **17. SCHEDULING** - Defendants suggest a further CMC be set in September 2008.

7 Defense counsel will be out of the country and unavailable for any purposes from October 8,
 8 2008 through September 17, 2008.

9 **18. TRIAL** - Defendants request evaluating trial setting be deferred until their summary
 10 judgment motion.

11 **19. DISCLOSURES OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

12 None as to Defendants

13 **20. MISCELLANEOUS MATTERS** - None as to Defendants

15 Dated: May 30, 2008

Respectfully submitted,

16 ANN MILLER RAVEL
 17 County Counsel

18 By:

19 /S/
 20 MARCY L. BERKMAN
 21 Deputy County Counsel

22 Attorneys for Defendants
 23 JOHN G. VARTANIAN, III and
 24 MARY MURPHY

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